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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 301

REG-139845-02

RIN 1545-BB12

Gross Estate; Election to Value on Alternate Valuation Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the election under section 2032 to value a decedent's gross estate on the alternate valuation date. The proposed regulations reflect a change to the law made by the Deficit Reduction Act of 1984. The proposed regulations affect estates that are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written or electronic comments and requests for a public hearing must be received by March 24, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139845-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to:

CC:PA:LPD:PR (REG-139845-02), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Theresa Melchiorre, (202) 622-7830; concerning submissions of comments or to request a hearing, Treena Garrett, (202) 622-3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As a general rule, section 2031 provides that the value of a decedent's gross estate is to be determined as of the date of the decedent's death. Section 2032 provides that the executor may elect to value the property on an alternate valuation date. Prior to the enactment of the Deficit Reduction Act of 1984, Public Law 98-369 (98 Stat. 494), section 2032(c) and ' 20.2032-1(b) of the Estate Tax Regulations required the election to be made on a timely filed estate tax return, including extensions of time to file actually granted. The Deficit Reduction Act amended section 2032, effective for estates of decedents dying after July 18, 1984, by redesignating section 2032(c) as section 2032(d) and amending section 2032(d) to provide that the election may be made on the estate tax return, whether it is filed timely or late, as long as the return is filed no more than 1 year after the due date, including extensions. Temporary Regulation ' 301.9100-6T(b), issued on September 5, 1984, reflects this change to the law and provides a transition rule for estates of decedents dying before July 19, 1984. The temporary regulation, however, also provides that once a return that fails to make the election is filed, the election may not be made on a subsequent return unless the subsequent return is filed by the due date (including extensions) of the original return. This limitation is not found in ' ' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations that apply to all requests for an extension of time to make an election submitted to the IRS on or after December 31, 1997.

The Deficit Reduction Act of 1984 also added new section 2032(c) that provides that, in the case of estates of decedents dying after July 18, 1984, the election to use the alternate valuation method may be made only if the election results in a reduction in both the value of the gross estate and the actual estate tax liability. The Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2085), amended section 2032(c)(2) to provide that the election may be made only if the election results in a decrease both in the value of the gross estate and in the sum of the estate tax and generation-skipping transfer tax liability (reduced by credits allowable against these taxes).

Explanation of Provisions

These proposed regulations will amend ' 20.2032-1(b) to reflect the change made to section 2032 by the Deficit Reduction Act of 1984. In addition, the proposed regulations, when finalized, will remove temporary regulation ' 301.9100-6T(b) of the Procedure and Administration Regulations so that estates that fail to make the alternate valuation election on the last estate tax return filed before the due date or the first return filed after the due date will be able to request an extension of time to make the election under the provisions of ' ' 301.9100-1 and 301.9100-3. However, in view of the statutory 1 year limitation imposed under section 2032(d)(2), no request for an extension of time will be granted if the request is submitted to the IRS more than 1 year after the due date of the return (including extensions of time to file actually granted). The proposed regulations also provide guidance on making a protective election under section 2032.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory

action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 301 are proposed to be amended as follows:

PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U. S. C. 7805 * * *

Par. 2. Section 20.2032-1(b) is revised to read as follows:

' 20.2032-1 Alternate valuation.

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(b) Method and effect of election--(1) In general. The election to use the alternate valuation method is made on the return of tax imposed by section 2001. For purposes of this paragraph (b), the term return of tax imposed by section 2001 means the last estate tax return filed by the executor on or before the due date of the return (including extensions of time to file actually granted) or, if a timely return is not filed, the first estate tax return filed by the executor after the due date, provided the return is filed no later than 1 year after the due date (including extensions of time to file actually granted). Once the election is made, it is irrevocable, provided that an election may be revoked on a subsequent return filed on

or before the due date of the return (including extensions of time to file actually granted).

The election may be made only if it will decrease both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax with respect to the property includible in the decedent's gross estate. If the election is made, the alternate valuation method applies to all property included in the gross estate and cannot be applied to only a portion of the property.

(2) Protective election. If, based on the return of tax as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax liability of the estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. A protective election made on the return of tax imposed by section 2001 is irrevocable, provided that it may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). Absent such revocation, if it is later determined that use of the alternate valuation method would result in a decrease in both the value of the gross estate and in the sum (reduced by allowable credits) of the estate tax and generation-skipping transfer tax liability of the estate, the protective election becomes effective and cannot thereafter be revoked.

(3) Requests for extension of time to make the election. A request for an extension of time to make the election pursuant to ' ' 301.9100-1 and 301.9100-3 of this chapter will not be granted unless the request is submitted to the Internal Revenue Service no later than 1 year after the due date of the return (including extensions of time to file actually granted).

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PART 301BPROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U. S. C. 7805 * * *

' **301.9100-6T [Amended]**

Par. 4. Section 301.9100-6T is amended by:

1. Removing the language ~~paragraph (b)(2)~~ from paragraph (a)(2) introductory text, and adding the language ~~paragraph (a)(2)~~ in its place.
2. Removing paragraph (b).
3. Redesignating paragraphs (c) through (s) as paragraphs (b) through (r), respectively.
4. Removing the language ~~paragraph (c)(2)~~ from the last sentence in newly designated paragraph (b)(2) and adding the language ~~paragraph (b)(2)~~ in its place.
5. Removing the language ~~paragraph (l)~~ from the second, fourth and last sentences in newly designated paragraph (k) and adding the language ~~paragraph (k)~~ in its place.

Mark E. Matthews

Deputy Commissioner for Services and Enforcement